



EVERY ROSE HAS IT'S THORN

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A landmark decision from the Supreme Court has recognized the importance of all contributions made by parties to a relationship.

Background

Mr & Mrs Rose had been married for 25 years when they ended their marriage in 2004. Prior to their marriage, Mr Rose was the owner of a farm property, Cloverlea. The Property (Relationships) Act 1976 distinguishes between relationship property and separate property. Relationship property is the pool of common property and, at separation, is to be divided equally (unless there are extraordinary circumstances that would make equal sharing inequitable).

However, the recent ruling in *Rose v Rose* demonstrates that there are also pathways whereby separate property becomes relationship property.

Relationship Property

Relationship property includes:

- the family home – whether acquired before or during the relationship
- family chattels – whether acquired before or during the relationship
- all property jointly owned
- property owned immediately before the relationship began, if it was acquired in contemplation of the relationship and it was intended for the common use or the common benefit of the partners
- all property acquired after the relationship began, unless it is separate property or the succession, survivorship, trust and gift provisions
- increases or gains in relationship property (subject to some exceptions)
- increases in the value of one partner's separate property, if the increase is attributable to:
 - the use of relationship property
 - the direct or indirect actions of the other spouse or partner

Separate Property

Separate property is defined in the Act as being any property that is not relationship property.

Rose v Rose

The basic approach of the courts to date has been that if the non-owning partner contributes to an increase in the value of the other partner's separate property, that increase in value becomes relationship property.

Mrs Rose sought to share the increase in the value of the farm, Cloverlea, at the date of separation. She argued that during the course of the marriage relationship, her outside earnings combined with her duties as a homemaker, enabled her husband to keep his farm and develop it into a vineyard. During the term of the marriage relationship the farm appreciated in value significantly due to both inflationary pressures and its location within a prime Marlborough grape region.

The Court accepted Mrs Rose's argument and held that Mrs Rose was entitled to a 40% share in the increase in the value of the separate property. Mr Rose was given a 60% share giving him greater credit for the inflation and general increase in the value of the land.

It is considered a landmark decision because despite the apparent indirectness of Mrs Rose's contributions, she was awarded a significant share of the increase in the value of the separate property.

A Suggestion

One way you may possibly prevent separate property becoming relationship property is to record it in a [section 21 Agreement]. This agreement would specify that that regardless of the contributions made to the relationship by the other partner during the life of the relationship, it is to remain separate property.

For more information, please contact one of our offices.

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